A Study of Occupational Freedom in the German and Korean Constitutions and Examination of the Constitutionality of the Korean Law School's Admission System

WonSoon Kim*

Ⅰ. Introduction

Ⅱ. Nature of Occupation and Significance of Protecting Occupational Freedom
A. The Nature of Occupation
B. Importance of the State's Protection of Occupational Freedom

Ⅲ. The Debates on the Protection of Occupational Freedom in Germany
A. How Germany Protects Occupational Freedom as a Basic Right
B. How the Occupational License System Can Affect Occupational Freedom
C. The Right to Education and Restriction on Choice of Profession

Ⅳ. How Occupational Freedom is Protected in the Republic of Korea
A. Constitution of the Republic of Korea and Decisions of the Constitutional Court of Korea about Occupational Freedom
B. Rulings of the Constitutional Court of Korea about Occupational Licensing and Law School

Ⅴ. Examination of the Constitutionality of Korean Law Schools' Admission System
A. Background of Disputes about Constitutionality of Korean law schools
B. Examination of the Constitutionality of the Korean Law School Admission System

Ⅵ. Conclusion

* J.D. Candidate, Feb. 2019. Seoul National University Law School. E-mail: serendipity2017@snu.ac.kr

Abstract

This article reviews and examines 1) significance of occupational freedom's protection, 2) provisions of German Constitution, primarily Article 12(1), relevant to occupational freedom, 3) the German Federal Constitutional Court's decisions about occupational freedom, particularly, the pharmacy case, in which the theory of 3 steps was found, and *Numerus Clausus* case in which the Court ruled that the medical school's rejection to applicants violated the Basic Law. The article applies these understanding about occupational freedom to examine the constitutionality of Korean law school's current admission system. This would be meaningful because there exist many similarities between Korean and German Constitution, particularly in the domain of occupational freedom and Korean Court had often referred to the decisions the German court made in similar cases. A graduation of Korean law school is an irreplaceable prerequisite to pass a bar exam and be a lawyer. Referring to the Basic Law and the Federal Constitutional Court's decisions about occupational freedom, especially a 3-steps theory, the article concludes that the current Korean law school admission system infringes on occupational freedom of law school applicants rejected admission and therefore needs to be reformed.

Keywords: Constitutionality of Korean Law School System, German Federal Constitutional Court's Decisions about Occupational Freedom

Manuscript received: 08. 20, 2018; review completed: 09.12, 2018; accepted: 11.15, 2018

I. Introduction

On July, 2018, a Korean law school graduate committed suicide, and her suicide has been attributed primarily to her repeated failures in the bar exams.[1] The year-by-year decreases in the bar exam pass rate since law schools were introduced in the Republic of Korea have resulted in many law school graduates repeating the bar exams and some graduates who cannot take the exam again, since a person is limited to only five attempts at the bar exam.[2] Such results are contradictory to the expectation of policy makers who introduced law schools in Korea, which was to resolve many social problems that resulted from the prohibitively low passing rates of the past judiciary bar exam, such as hampering social productivity and distorting the distribution of human resources.

> "In many market-oriented economies, government restrictions upon economic activity are pervasive facts of life. [...] These restrictions give rise to rents of a variety of forms, and people often compete for the rents. Sometimes, such competition is perfectly legal. [...] Rent-seeking activities are often competitive and resources are devoted to competing for rents."[3]

The current artificial manipulation and control on the number of lawyer license holders, which includes limiting the total entrance quota for law schools to 2,000 students per year and retaining the number of bar exam passer around 1,500-1,600 students despite the increasing number of exam takers,[4] raises doubts about whether the true motive behind such a restriction is legitimate. Among nations that adopted the law school system, there is no country other than the Republic of Korea, in which the government predetermine the entrance quota.[5]

---

1) Kyung-Min Kim, *Guekan-ui Hap-gyeog-ryule Geukdanjeok Seotaegkkaji . . . Saramjabneun 'Byeonsi' [Extreme Choices Made Due to the Bar Exam]*, NEWSPIM (July 16, 2018, 2:32 PM), http://www.newspim.com/news/view/20180716000176.

2) Byeonhosasiheombeop [National Bar Examination Act], Act No. 15154, Dec. 12, 2017, art. 7 (S. Kor.).

3) Anne O. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291, 291 (1974).

4) Sangyeon Lee, *2018 Nyeondo Je 7 Hoe Byeonhosasiheom 1599Myeong Hapgyeok (7Bo) [1599 people passed the 2018 Bar exam]*, THE L.J. (April 20, 2018), http://www.lec.co.kr/news/articleView.html?idxno=47380.

5) Chang-Rok Kim, *Hanguk Roseukuljedoui Hyeondangyewa Jeonmang [The Current Status and Prospect of the Korean Law School System]*, 32 KYUNGPOOK NAT'L L.J. 23, 25 (2010).

Since the first major drive for judicial reformation was brought up in 1995 under the government led by president Kim Young-Sam, continued debates, public criticism and demands for reformation of the Korean judiciary system arrived at the change of the lawyer-selection system that Korean society had administered for decades. The old bar exam was abolished and the Korean graduate professional law school system was established instead. Whereas the change of the lawyer-selection system was the center of intense debates in which different interest groups such as the bar association, the Ministry of Justice, colleges of law and even the Supreme Court had their say, there has been an insufficient study about the constitutionality or legitimacy of the practical operation of law schools, especially their admission system.

Hence, in this paper I review and examine 1) occupational freedom in general, 2) interpretation of Article 12(1) of the German Constitution, the Basic Law, and 3) the German Federal Constitutional Court's decisions about occupational freedom. I examine the Pharmacy Case in which the Theory of 3 Steps was found, and the *Numerus Clausus* Case in which the Court ruled that the medical school's rejection of applicants violated the Basic Law. I apply this understanding of occupational freedom to examine the constitutionality of the currently operating law school admission system in the Republic of Korea. Comparing the German and Korean Constitution would be worthwhile, since not only do many similarities exist between two nations' legal systems but also their Constitutions are similar. It is not surprising that the Constitutional Court of Korea had often referenced to the decisions or legal reasoning the German court previously made in similar cases, such as the Theory of 3 Steps[6]. Referring to the Federal Constitutional Court's decisions about occupational freedom, I conclude that the currently operating law school application and admission in the Republic of Korea infringe on occupational freedom of law school applicants rejected admission and therefore need to be reformed in such a way as to increase the entrance quota.

6) Constitutional Court [Const. Ct.], 92Hun-Ma80, May 13, 1993 (S. Kor.); Constitutional Court [Const. Ct.], 90Hun-Ba43, June 29, 1995 (S. Kor.); NAK IN SUNG, HEONBEOPAK [CONSTITUTIONAL STUDY] 1314-15 (18th ed. 2018); JONGSEOP JEONG, HEONBEOPAGWOLLON [THE THEORY OF CONSTITUTIONAL LAW] 698 (11th ed. 2016).

II. Nature of Occupation and Significance of Protecting Occupational Freedom

A. The Nature of Occupation

1. The Basis of Living and the Means of Self-Realization

To discuss occupational freedom, it is necessary to clarify the concept first. The concept 'occupation' is abstract and open to interpretation, so it is important to examine the nature of 'occupation'. First and foremost, an occupation is each individual's means of living. Basically, a human works to live; through occupational activities, a human can earn profits according to what he or she deserves, including the basic necessaries of life. Since a certain income level is necessary to live as an independent subject in the market economy oriented society, the right to work is indispensable or fundamental right to individuals.

Beyond just a means of living, an occupation is also important in that it is a means to self-realize or fulfill by oneself of the possibilities of one's character or personality. It relates to the question of why people live. In Leo Tolstoy's novel, '*What Men Live By*', the protagonist, an angel Michael, finds the meaning of life or what men live by while he works under the shoemaker Simon.[7] Life itself is meaningful. However, humans can find more special meanings in life through exercising their occupation, while spending a time to learn and be prepared for their jobs and while doing works at their working places. Therefore, choosing one's life work is an act of self-determination, and practice of occupation is an essential and fundamental part of an individual's life. A job functions as the goal or dream before one gets that job, and while practicing an occupation, one feels a sense of accomplishment and has a self-esteem in his or her work; one also interacts with other people through his or her occupation. Moreover, one can contribute to the society through the practice of jobs.

These diverse aspects of occupation make life more meaningful and enliven to human dignity; a human can find love, happiness and other meanings of life through their works.[8] Article 10 of the Korean Constitution states "all citizens

---

7) LEO TOLSTOY & NATHAN H. DOLE, WHAT MEN LIVE BY (1888).
8) JEONG, supra note 6, at 691.

shall be assured of human worth and dignity and have the right to pursue happiness," and the Constitutional Court of Korea adjudicated several times that there exists an intimate connection between the freedom of occupation and the right to pursue happiness and dignity.[9]

2. The Essential Components of a Free Market Economy

To individuals, occupation has the meaning as discussed in the above section, and, to the state, and nation as a whole, it has another significance as an essential component of the free market economy. Many modern nations run the free market economy and regard it as their fundamental constitutional value. For example, Article 119 of Korean Constitution states, "the economic order of the Republic of Korea shall be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs."[10] The German Constitution, the Basic Law, also laid out occupational freedom as the basic prerequisites to economic freedom or a free market system among its fundamental rights.[11]

Free choice and exercise of occupation enable free and creative economic activities, and occupational freedom is one of the main sources of difference between market economy and planned economy.[12] The communist nation such as North Korea still forcibly allocates certain occupations to its citizens, disregarding each citizen's intent or preference.[13] In the market economy, however, people carry out their jobs voluntarily because there exists market needs and willingness to pay for products or services they provide. Considering that free market economy is one of the main values of liberal democracy, protection of occupational right plays a key role in protecting the main foundation of modern liberal democracy.[14]

---

9) Constitutional Court [Const. Ct.], 2013Hun-Ma359, Aug. 28, 2014 (S. Kor.); Constitutional Court [Const. Ct.], 2015Hun-Ma359, July 28, 2016 (S. Kor.).

10) DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 119 (S. Kor.).

11) THOMAS FLEINER & LIDIJA BASTA FLEINER, CONSTITUTIONAL DEMOCRACY IN A MULTICULTURAL AND GLOBALISED WORLD 183 (2009); Michael R. Hayse & Konrad H. Jarausch, *Recasting West German Elites: Higher Civil Servants, Business Leaders, and Physicians in Hessen, 1945-1955*, 1995 (unpublished Ph.D. dissertation, University of North Carolina), at 105.

12) JOHAN STRYDOM, INTRODUCTION TO MARKETING 29 (3d ed. 2004).

13) *Bukan, Igeosi Gunggeumhaeyo Seumulhan Beonjjae: Jigeopseontaequi Jayu Geurigo Seonhojikjongeun? [Career Preferences and the Freedom to Choose a Career]*, TONGIL HANGUK, June 1, 2013, at 40, 41.

14) Constitutional Court [Const. Ct.], 2013Hun-Da1, Dec 19, 2014 (S. Kor.).

B. Importance of the State's Protection of Occupational Freedom

So far, this paper discussed how occupational freedom enables citizens to self-realize or fulfill by oneself of the possibilities of one's character or personality and concurrently sustains or keeps up the free-market economy.[15] In the feudal system, a person's job or occupation was mostly determined by his or her social status and privileges. With the arrival and development of capitalism and market economy, however, people began to choose and practice occupations more freely[16]; more the society accommodates the value of democracy and market economy, more occupational activities move from the public to the private sectors. Now, the state's intervention on occupational exercises is mainly focused on operating the occupational license system, banning illegal activities and doing a secondary function to help the unemployed and solve out the conflicts between the private. Hence, in the present day, protection of occupational freedom primarily matters in three scenarios: 1) a government's interference with citizen's right to choose professions, 2) a government's regulation on citizen's right to exercise jobs, and 3) a government's intervention when the private sector unfairly refuses to employ applicants (i.e., sex and physical disability of the job applicant).[17]

III. The Debates on the Protection of Occupational Freedom in Germany

A. How Germany Protects Occupational Freedom as a Basic Right

1. Constitutional Provisions

Countries with a written constitution such as Germany and the Republic of Korea lay down occupational freedom as one of the basic rights or fundamental rights in their written Constitutions and make a limit on the state's regulation on the freedom. The so-called 'basic rights' mean the rights listed from Article

15) Constitutional Court [Const. Ct.], 94Hun-Ma113, Aug. 29, 1996 (S. Kor.).
16) Constitutional Court [Const. Ct.], 92Hun-Ma80, May 13, 1993 (S. Kor.).
17) Donald P. Kommers, *German Constitutionalism: A Prolegomenon*, 40 EMORY L.J. 837, 839 (1991).

1 through 19 in the Basic Law. The basic rights contain the values that shape German democracy.[18] The basic rights are aimed at protecting the individual freedom of each citizen against state intervention. As such, they determine a certain area of liberty within which the individual can act free from state encroachment, thus being defensive or negative rights.[19] In this respect, this basic right and 'basic right' of the Korean constitution are similar or identical concepts. According to Article 1(3) of the Basic Law, all state authority is constrained by the basic rights, so that all measures undertaken by any part of the state authority must comply with the basic rights. Every state action that prevents the citizen from exercising his or her basic rights is seen as a violation of that right.[20] Yet, not every violation of a basic right by the state is unconstitutional, since the exercise of basic rights by an individual could lead to conflicts with the public interest or with the interest of other individuals. Basic rights with statutory reservations can be limited by or pursuant to a statute, and basic rights without statutory reservations can be restricted by conflicting constitutional interests.

Still, there are limits to the restrictions of the basic rights. First, Article 19(2) provides that the restriction of the essential character of a basic right is prohibited. Second, to satisfy the requirement of legal certainty, the statute must be clear and unequivocal. Third, according to the principle of proportionality, the basic rights of the citizens may only be limited by powers in so far as it is indispensable for the protection of the public interest. The principle of proportionality consists of three requirements: suitability, necessity, and appropriateness.[21]

Occupational freedom is one of the basic rights listed in the Basic Law. Article 12(1) of the Basic Law declares: "all Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training". Article 12(1) of the Basic Law is a specific provision of a general provision, Article 2(1), which declares: "every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law." Occupational freedom is a core element in formulating one's life and, 'free development of a

18) SABINE MICHALOWSKI & LORNA WOODS, GERMAN CONSTITUTIONAL LAW: THE PROTECTION OF LIBERTIES 69 (1999).
19) David Currie, *Positive and Negative Constitutional Rights*, 53 U. CHI. L. REV. 864 (1986).
20) BODO PIEROTH & BERNHARD SCHLINK, GRUNDRECHTE STAATSRECHT II [FUNDAMENTAL RIGHTS II] 59 (2003).
21) MICHALOWSKI & WOODS, *supra* note 18, at 79-85.

personality' without 'occupational freedom' cannot be imagined.[22] Using simple syllogistic reasoning, we can conclude that 'free development of his personality' is the essential character of occupational freedom and that the restriction of occupational right should not reach the level where it can violate free development of personality.

Similarly, the scope of protection awarded to freedom of occupation must be seen in the light of the importance of the right. In the Pharmacy Case[23] (1958), the Court ruled that the occupational right that should be protected by the Constitution can be defined as the activity which is unprohibited and aims to be of a certain duration and to be the source of livelihood. Consequently, an activity would be included in the scope of 'occupation' of occupational freedom as long as three conditions are met: 1) unprohibited, 2) certain duration, and 3) the source of livelihood. It does not distinguish between employed or self-employed work, and embraces all occupations, even the one not defined by tradition or by law. Every lawful activity and every type of work are consequently protected by Article 12(1).

Under such definition of occupation, however, a prostitute or a smuggler cannot be protected. Excluding certain activities from a sphere of protection of occupational right in the first place (normgeprägte schutzbereiche) is inappropriate.[24] This may violate the principle that the Constitution holds priority over the statutory law and the principle of maximum protection of fundamental rights. The scope of protection of fundamental rights or what should be protected by the constitution should be determined not by the law but by the constitutional value. The constitution deserves priority over lesser laws because of its superior democratic pedigree.[25] Even if we include the illegal activities into the scope of occupations under the Constitution, it is still possible to restrict it by laws or regulations since it would be relatively easier to justify regulations on illegal occupational activities. In this way, we can avoid the risk of negating any protection for illegal activities entirely regardless of the gravity of illegalities and other complex circumstances. The Constitutional Court of Korea states that illegal activities such as prostitution are included in the scope of occupational freedom.[26]

22) EKKEHART STEIN & GÖTZ FRANK, STAATSRECHT [CONSTITUTIONAL LAW] 373 (2010).
23) Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BvR 596/56, June 11, 1958 (Ger.).
24) SUNG, *supra* note 6, at 1306.
25) AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY 303 (2012).
26) Constitutional Court [Const. Ct.], 2015Hun-Ba65, Sept. 29, 2016 (S. Kor.); Constitutional Court [Const. Ct.], 2013Hun-Ka2, Mar. 31, 2016 (S. Kor.).

Considering the importance and meaning an occupation has in each individual's life and it has in the society as a whole, the decision about the scope of occupations requiring protection should not be in hand of lawmakers. Furthermore, some new occupation which is not prohibited from the law may have a much more harmful effect on the society than the existing activities which are illegal. Lastly, the legality of activities is not fixed, rather adapts to social changes. Hence, it would be better to include illegal activities in the scope of protection of occupational freedom in the first place and require legislators to justify regulations on the freedom if they want to prohibit certain occupational activities.[27]

2. Constitutional Decisions

i. The Pharmacy Case (1958), a Seminal Case about Occupational Freedom

The Federal Constitutional Court's decisions in cases about occupational freedom elaborate how the Court deals with protection and restriction of occupational freedom. First of all, the Pharmacy Case of 1958 shows the Court's approach to assessing laws deemed to infringe the choice or practice of an occupation under Article 12(1).[28] "Bavaria restricted the number of pharmacies licensed in any given community. The state's Apothecary Act provided for the issuance of additional licenses only if the new pharmacies would be commercially viable and would cause no economic harm to nearby competitors. In 1955, Bavaria invoked this statute to deny a license to a person who had recently immigrated from East Germany, where he had been a licensed pharmacist. The applicant filed a constitutional complaint against the decision of the Bavarian government and the statutory provision under which the action was taken. In striking down the relevant provision of the law, the Constitutional Court set forth the general principles governing its interpretation of the right to occupational choice."[29]

27) RALF POSCHER, GRUNDRECHTE ALS ABWEHRRECHTE: REFLEXIVE REGELUNG RECHTLICH GEORDNETER FREIHEIT 132-33 (2003).
28) Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BVR 596/56, June 11, 1958 (Ger.).
29) DONALD P. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 274 (2d ed. 1997).

ii. Unification of Choice (Wahl) and Practice (Ausübung) of Occupation

The court ruled that Article 12(1) is a unified basic right in the sense that the reservation clause of sentence 2, "the practice of trades, occupations, and professions may be regulated by or pursuant to a law", grants the legislature the power to make regulations affecting either the choice or the exercise of an occupation. The Court regarded choice and practice as interrelated liberties that represent a “complex unity”.[30] The Court ruled that the concepts of “choice” and “practice” are not mutually exclusive, and both concepts are incorporated into the notion of “vocational activity”. Thus, although there is no proviso on occupational choice, the court ruled that an interpretation that would absolutely bar lawmakers from every interference with vocational choice cannot be correct. After the Court regarded them as united concept, it then tried to differentiate them at the next stage, using the theory of three steps.

iii. A Theory of 3 Steps: A Graduated Scale of Possible Restrictions

The Pharmacy Case set forth for the first time the “theory of three steps” (3-Stufentheorie) for assessing restrictions on occupational choice. The Court follows the text of Article 12 in differentiating between the choice of an occupation and its practice.[31] The Court says the true meaning of the text of Article 12(1) is that for occupational choice and practice of an occupation, the legislature is empowered to regulate each of these aspects of vocational activity to the different degree. The more a regulatory power is directed to the choice of an occupation, the narrower are its limits; the more it is directed to the practice of an occupation, the broader are its limits.

A theory of 3 steps is used to differentiate the level of restriction permitted. According to the theory of 3 steps, to achieve its legislative purpose, the legislator should use the method available which exerts the least harm on occupational freedom. Therefore, the legislators should first attempt to regulate on the practice of occupation, and if it is impossible, then the legislator should instead regulate on the exercise of occupation based on subjective condition,

30) *Id.* at 275-76.
31) *Id.* at 278.

and if the goal cannot be achieved again, then, there happens a possibility that the legislator is allowed to make a regulation based on objective condition.[32]

The court applies a different standard of review to regulations on different levels or steps. The three-level approach which has been developed by the Court operates as follows: the first level concerns the practice of an occupation, that is details with regard to the way in which the profession may be exercised.[33] The practice of an occupation may be restricted by reasonable regulations predicted on considerations of the common good. Second, the regulation must be necessary to achieve the legislative purpose. In short, a less restrictive but equally effective means to achieve the state's end must be unavailable. Finally, the means used must not be disproportionate to the accomplishment of the task.

The second level approach concerns subjective conditions for admission to a profession, for example, professional qualifications. Here, restrictions are constitutional only if they are necessary to protect an overriding community interest, and they do not violate the principle of proportionality. Finally, the third level deals with objective conditions for admission to a profession, that are conditions which the individual cannot influence, for example, absolute limits to the number of pharmacies. These restrictions are legitimate only if they are absolutely necessary to protect a community interest of absolute importance.[34]

iv. Criticism of the Theory of 3 steps

Although the court ruled that Article 12(1) is a unified basic right, the basic principle of interpretation is that we should interpret provision or article as faithfully as possible to the usual meanings of expressions used. Clearly, there is no proviso on Article 12(1) while there exists a proviso on Article 12(2). Applying a proviso written in article 12(2) to both article 12(1) and 12(2) clearly deviates from the limit of statutory interpretation. The court's interpretation may also topple down a system of proviso: simple proviso, restricted proviso and no proviso. Before ignoring the lawmaker's intent, we need to consider why the lawmaker did not put a proviso on the occupational choice. As already discussed before, the right to choose an occupation is one of the most important fundamental basic rights. The absence of a statutory reservation demonstrates that the legislator did not want the basic right to be

---

32) SUNG, *supra* note 6, at 1315-18.
33) MICHALOWSKI & , *supra* note 18, at 308.
34) *Id.*

subject to the choices of the legislator. Those rights can only be limited by conflicting basic rights of third parties or by other legal values having constitutional status. Besides, occupational choice itself without practices, although it is difficult to postulate such condition, does not cause any harm to society.

Application of the theory of three steps needs caution since the theory has a weakness and the theory is not a universal key to occupational freedom issues. Since it is hard to differentiate between subjective condition and objective condition, the theory of 3 steps is not self-contained. Rather, we can say the theory of 3 steps is a categorization of the Court's decisions already made into three categories, applying the original jurisprudence about limits on limits of basic rights; (1) principle of proportionality, (2) prohibition of the restriction of the essential character of a basic right and (3) the requirement of legal certainty. Hence, despite usefulness of the 3-steps theory, I suggest we need to be cautious of applying the theory of 3 steps mechanically or being dependent too much on it, believing that application of the theory would always give back the correct answer automatically.

B. How the Occupational License System Can Affect Occupational Freedom

In the case when the practice of an occupation is related to securing national or social interest, the nation requires certain conditions for the occupation, which is a license system. Due to its legitimate purpose, restrictions on occupational freedom using the license system is more likely to be found constitutional than other restrictions. An occupational license is a state-issued license required to pursue a particular occupation or engage in a certain economic activity. Under occupational licensure, individuals are restricted from working in those occupations or engaging in those activities without permission from the state. All persons working in a given field should be properly trained to perform their duties properly and safely. A license is often justified in professions that impact the health, safety, and welfare of the public.

To justify a license system, there should be a proof that there is a clear, likely and well-established danger to the public from unlicensed practice. And, if they do choose to license an occupation, they should carefully determine how much of the burden placed on applicants is truly needed to ensure public health and safety. Forcing workers to take unnecessary classes, engage in lengthy apprenticeships, pass irrelevant exams or clear other needless hurdles does

nothing to ensure the public's safety. It simply protects those already in the field from the competition by keeping out newcomers.[35]

Although occupational licensing may be justified as a means of protecting the public against incompetent and dishonest practitioners, the mandatory licensure often restricts entry into an occupation, thereby reducing competition among established members.[36] Hence, the legislator should be cautious about the abuse of occupational licensing, because less restrictive forms of licensing may protect the public against shoddy or fraudulent services without curtailing occupational freedom.

In the Retail Trade Case (1965), the German Constitutional Court invalidated statutorily imposed technical educational requirements as applied to a general merchandise dealer. The Court said such knowledge was unnecessary to operate a general store in the public interest.[37] The requirement was thus an "undue burden" on freedom of occupational choice. In the Handicraft Admission Case (1961), however, "the Court sustained a federal statute introducing an examination requirement before master craftsmen could obtain a certificate of proficiency. The Court found this measure a reasonable means of protecting and promoting handicraft trades and small economic enterprises."[38]

Admission to an occupation may not be grounded on any effort to protect existing trades or businesses against the competition. The Court denied the state's authority to refuse licenses on the ground that there are enough experts already operating in the field. The denial of a license to a new taxi merely because the local community is already well served by the taxicab trade is therefore invalid. In the Long-Haul Truck Licensing Case (1975), however, the Court found that the quota on long-haul trucking permits was a necessary and proper means of preventing a major threat to the compelling public interest in an efficient railroad transportation system.[39] Hence, it is hard to find a unilateral rule that can be applied in the occupational license system. Justification depends on the balance between the level of regulation on occupational freedom and the level of danger to the public from unlicensed practice, which requires factual judgments.

---

35) Dick M. Carpenter et al., *License to Work: A National Study of Burdens from Occupational Licensing*, INST. FOR JUST., May 2012, at 100-03.
36) Walter Gellhorn, *The Abuse of Occupational Licensing*, 44 U. CHI. L. REV. 6, 6-27 (1976).
37) KOMMERS, *supra* note 29, at 280.
38) *Id.* at 281.
39) *Id.* at 278.

C. The Right to Education and Restriction on Choice of Profession

1. Facts and Findings in the Numerus Clausus Case[40]

In *Numerus Clausus* Case, a problem arose because many more students had applied to be admitted to medical schools than there were places available. Some German states reacted by enacting provisions restricting access to medical schools. By the mid-1960s, West German universities were overcrowded. Between 1952 and 1967 the number of university students in West Germany roughly doubled to about 270,000. The construction of new universities and the expansion of existing faculties, however, did not come close to keeping pace.[41] In some fields, such as medicine, the crisis was severe. At medical schools across the country, there were more applicants than places, more students than faculty or facilities could possibly accommodate. A state government dealt directly with the immediate problem of overcrowding, adopting a system known as *Numerus Clausus*, which is admission ceilings, sometimes absolute, and an entering class could not expand regardless of the number of qualified applicants. Hamburg passed such a law for its medical school in April 1969; Bavaria followed suit in July 1970. Applicants whose test scores qualified them for admission, but who were repeatedly denied on *Numerus Clausus* grounds, challenged both laws before the Constitutional Court.[42] Many students who could not secure admission to medical schools instituted an action claiming that the restrictions were arbitrary and had violated their rights freely to choose their occupation as well as their right to equality.

In its judgment, the Court upheld the claim of the complainants, holding that the state was obliged to establish that the restrictions were necessary and that the available spaces were equitably distributed. The German's constitutional right to choose their occupation and place of training and the equality clause in the Basic Law were the foundations for the Constitutional Court's putting the onus on the state to prove that the maximum possible number of places were provided in medical school to candidates selected fairly in accordance with objective criteria.

---

40) Bundersverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BvL 32/70, July 18, 1972 (Ger.).

41) JUSTIN COLLINGS, DEMOCRACY'S GUARDIANS : A HISTORY OF THE GERMAN FEDERAL CONSTITUTIONAL COURT 1951-2001 387.

42) *Id.*

The Court established that university education is within the scope of protection granted by Article 12(1) of Basic Law. The Court has emphasized the importance of guidelines for occupational training. There exists the fundamental relationship between training for an occupation and practicing it. An absolute *Numerus Clausus* on medical admissions banned many applicants from their chosen occupation on the basis of circumstances over which the applicants themselves had no control. It followed that the Court must treat a restriction on the choice of the educational path as it would a restriction on the choice of profession. This means that, in accordance with the 1958 Pharmacy judgment, the justices must subject such restrictions to their severest scrutiny.

Absolute *Numerus Clausus* meant that one class of citizens received the full measure of state educational services while another class, equally qualified, received nothing or must, in any case, wait until the service might to them no good. The judge ruled this is blatant inequality.

From the constitutional equality, occupational freedom and social state clauses, an individual 'right of admission to university study' are derived. Every German is entitled to carry out a chosen program of study if he or she demonstrates the requisite qualifications.

> "When the state has created certain educational institutions, then claims of access to these institutions may arise from the principle of equality in tandem with Article 12(1) and the social state principle. This is especially true when the state has a factual monopoly in the sphere of education, and when participation in governmental services is also an indispensable precondition for the exercise of basic rights, as in the field of training for academic professions. Although such right could be still limited by law, the state must give every applicant a fair chance at admission, show the utmost regard for each individual's choice of study, and demonstrate that every place in a given department was filled to capacity."[43]

The Hamburg law failed this standard because it was too general. The Hamburg legislature had not fixed the criteria for admissions bars itself but had delegated such decisions to the universities. This was impermissible. Criteria which determines beneficiaries and excludes some citizens from these privileges should

43) Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BvL 32/70, July 18, 1972 (Ger.).

be left to the limited discretion of governmental agencies since this would result in the government steering the choice of a profession.

According to the Court's theory of three steps, any absolute limit on admissions must meet the strict requirement. The choice of occupation depends upon the choice of education, and absolute restrictions on admissions to a particular educational program resulting from the depleted capacity in the educational facility are equivalent to an objective precondition for admission within the meaning of the theory of three steps. Therefore, a regulation based on general principles developed under Article 12(1) is permissible only to combat a demonstrably serious or highly probable threat to an exceedingly important community value. Also, the legislature must strictly observe the basic principle of proportionality and not wholly fail to consider the objectionable side effects, for example, by forcing students to change their programs of study.

Hence, the court ruled that an absolute restriction on the admission of beginning students is constitutional only if 1) the legislature imposes the restriction only when absolutely necessary, after having exhausted currently available publicly funded facilities and 2) the statute bases the choice and distribution of openings on equitable criteria and provides each applicant with the opportunity to compete for an opening, devoting the greatest possible attention to where the individual wishes to study. Those responsible for admitting students are obliged to make a selection which is reasonably acceptable to rejected applicants, always using the principle of fairness as a guideline, In particular, the article must give every qualified applicant a real chance to be accepted.[44]

On the procedural requirement, the Court ruled that the legislature must establish the rules for selection since the effects of this provisions are so far-reaching. If the government authorizes a delegation of its authority, it must at least determine the selection criteria and their order of importance.

However, the court also made clear that the legislator does not have an obligation to supply a desired place of education at any time to any applicant. The idea that the individual has an unlimited claim that is enforceable at the expense of the community as a whole is incompatible with the principle of a social state. It would be contrary to the state's mandate to achieve social justice as articulated by the principle of equality if the state gave only a privileged portion of the population the benefit of limited public financial resources while

---

44) KOMMERS, *supra* note 29, at 287.

neglecting other important concerns of the public welfare.[45]

An absolute *Numerus Clausus* on medical admissions of Hamburg law and an entrance quota of Korean law schools have many similarities. Hence, findings in *Numerus Clausus* Case can be meaningful in discussion about Korean law school entrance system.

2. Facts and Findings in a Recent Follow-Up Decision by the German Federal Constitutional Court on Numerus Clausus Case[46]

There is a recent follow-up decision by the German Federal Constitutional Court on *Numerus Clausus* case. The new decision mainly affirms the old one but elaborates on it in a number of aspects. The Court established that 1) every applicant for medical studies program is entitled to equality-based admission to the study program of their choice and 2) rules on the allocation of scarce university admission spots must follow the criterion of aptitude, and 3) the criteria applicable to the allocation of scarce admission spots must reflect the diversity of the potential considerations for assessing aptitude. The Court emphasized that 4) the legislature must itself regulate the essential questions pertaining to the allocation of scarce admission spots for medical studies, particularly defining the selection criteria by itself. The Court ruled that 5) giving priority to the indicated location preferences within the admission procedure, as well as only allowing six university locations to be indicated on applications for admission is not justifiable, within the context of the quota of best *Abitur* graduates, under constitutional law. The Court established that 6) the statutory provisions on university admissions are unconstitutional to the extent that the legislature leaves the universities the right to define their own admissions criteria, and that the aptitude assessments of the universities themselves are not conducted in a standardized and structured manner, and that for a sufficient number of admissions, no other selection criteria of significant weight are taken into account apart from the average *Abitur* grade.

The decision demonstrates that the Court developed and extended its previous discussion about the German medical studies program application and entrance system. Findings in the recent decision raise a doubt on whether the

45) *Id.* at 286.
46) Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 1 BvL 3/14, Dec. 18, 2017 (Ger.), http://www.bverfg.de/e/ls20171219_1bvl000314en.html.

Constitutional Court of Korea had applied similar standards of inspection or monitoring on constitutionality of Korean law school admission system. The German Court's decision clearly shows that it requires many checklists to review before we can determine constitutionality of law school admission system in the Republic of Korea. For example, the German Court states that

> "(t)he criteria applicable to scarce admission spots must reflect the variety of potential aspects to be considered in aptitude assessments. The extent to which a criterion can predict aptitude is a question of fact. The legislature must take into account that the actual significance of individual aptitude criteria is limited. The legislature must not provide for a criterion as the only selection criterion that does not allow sufficiently reliable predictions or only reflects partial elements of the requirements relevant to a study program, as this would render these shortcomings absolute in the selection process. It may, however, counteract this effect by adding other criteria that also have to be significant for aptitude. […] Based on the relevant findings, there are no constitutional concerns with regard to the Abitur grade as a proper aptitude criterion even for admissions to medical studies. Studies have shown that the Abitur grade is highly significant for predicting academic success in medical studies."[47]

The German Court examines whether the *Abitur* grade can function as a proper aptitude criterion, referring to reference materials. However, the previous decisions made about Korean law school that I analyze later in this paper do not seem to examine whether the LEET (Legal Education Eligibility Test) exam score can function as a proper aptitude criterion. This is an indirect example that reflects how different levels of deliberation are taken into the German Court's decisions about a series of *Numerus Clausus* cases and the Korean Court's decisions about Korean law schools. Therefore, I insist that much more thorough and accurate study about the law school's entrance system is required for the further advancement of law school system in the Republic of Korea.

47) *Id.* at 111-30.

IV. How Occupational Freedom is Protected in the Republic of Korea

A. Constitution of the Republic of Korea and Decisions of the Constitutional Court of Korea about Occupational Freedom

Article 15 of the Korean Constitution states that "all citizens shall enjoy the freedom of choice of occupation." Compared to Article 12 of the Basic Law, which comprises of three clauses, Article 15 of the Korean Constitution consists of only one sentence and does not specify exercise of occupation. The Constitutional Court of Korea, however, interprets Article 15 extensively to include all the aspects of occupational freedom, not just citizen's occupational choice. The Constitutional Court of Korea has made jurisprudence about occupational rights quite similar to or identical to that of the Federal Constitutional Court of Germany. Despite the textual differences between Article 15 of the Korean Constitution and Article 12 of the Basic Law, the Constitutional Court of Korea regards Article 15 of the Korean Constitution as very similar to Article 12 of the Basic Law through its extensive interpretation of Article 15 and has invoked a theory of three steps used by the Federal Constitutional Court in its rulings.

B. Rulings of the Constitutional Court of Korea about Occupational Licensing and Law School

Unlike the German Court's rulings referenced earlier, the Constitutional Court of Korea has been comparatively lenient about the scope of legislators' discretion in relation to the design and management of the occupational licensing system.[48] The Constitutional Court of Korea ruled that although Article 15 guarantees a citizen's right to occupational choice, the legislators may operate a licensing system for occupations that require expert knowledge or skills (e.g., lawyer, architect) or for occupations that handle citizens' life and health (e.g., medical doctor). Such licensing systems fully prohibit the freedom of occupational choice for those professional services and grant the freedom to work in those fields only to citizens who are qualified through obtaining a license. In principle, therefore, the legislators should give licenses to all citizens

48) Constitutional Court [Const. Ct.], 2005Hun-Ma997, April 27, 2006 (S. Kor.).

who are deemed to have sufficient capability or knowledge to practice the occupation. Requirements to endorse qualification (i.e, the substance of required conditions), however, should be left to the discretion of legislators.[49] The legislators can take characteristics of the profession and all sorts of other conditions or circumstances into consideration, but the freedom of legislators to craft authority related to this matter is acknowledged. Only when such requirements, as set up by the legislators, are clearly unreasonable, can there be a problem of unconstitutionality.

In line with the court's attitude toward the occupational licensing system, the Constitutional Court of Korea has been lenient about the scope of discretion of legislators in relation to its design and management of law schools. The 2007Hun-Ma1262 Case was about the constitutionality of Article 26(2) and (3) of the Act on the establishment and management of professional law schools.[50] The court ruled that the legislative authority was constitutional since, although the law limits occupational freedoms and the rights of universities, such regulation does not violate the principle of proportionality. Similarly, in the 2008Hun-Ma370 Case, the Minister of Education authorized 25 universities to establish law schools, following Articles 5 and 7 of the act on the establishment and management of professional law schools; although complainants argued that these articles violate the school's rights, students' occupational freedom, and the constitution because the law delegates to presidential decree what the law itself should determine, the Court emphasized the importance of the "public good" (e.g., guarantee of high-quality legal education, supply of high-quality legal service and efficiency of human resources) and ruled that the law does not violate the Korean Constitution.[51] The Court ruled that the legislator's extensive legislative discretion should be recognized in the area of professional license system and compliance with the principle of proportionality under

49) Constitutional Court [Const. Ct.], 96Hun-Ma109, Oct. 30, 1997 (S. Kor.).

50) *See* Beopakjeonmundaehagwon seolchi unyeonge gwanhan beomnyul [Act on the Establishment and Management of Professional Law Schools], Act No. 14152, May 29, 2016, art. 26 (S. Kor.), *translated in* Korean Legislation Research Institute online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38870&lang=ENG *(stating* (1) A professional law school shall endeavor to admit students having diverse knowledge and experience. (2) A professional law school shall have 1/3 or more of admitted students with undergraduate degrees in fields other than law. (3) A professional law school shall have 1/3 or more of admitted students who have earned undergraduate degrees from schools other than the school having the relevant professional law school).

51) Constitutional Court [Const. Ct.], 2008Hun-Ma370, Feb. 26, 2009 (S. Kor.).

Article 37 Section 2 of the Constitution should be applied under the less strict scrutiny standard in determining constitutionality of Korean Law Schools' admission system, which is related to the professional license system; therefore, in reviewing the system under the principle of proportionality, it is adequate for the standard of minimum restriction to be relaxed to reviewing whether the restriction is in the necessary scope to fulfill the legislative purpose.[52]

V. Examination of the Constitutionality of Korean Law Schools' Admission System

A. Background of Disputes about Constitutionality of Korean law schools

"The only practical path to attain a law license in Korea [was] to pass the National Judiciary Exam and complete a two-year apprenticeship at the Judiciary Training and Research Institute run by the Supreme Court."[53] The major criticism of the system was that the prohibitively low pass rate for the exam, combined with cumulative repeaters, have hampered social productivity and caused unbalanced distribution of human resources. Between 1974 and 1981, the annual quota of students passing the judiciary exam was increased from 60 to 300, and this number of personnel was maintained by 1995. Between 1995 and 2005, the annual quota has steadily increased again, from 300 in 1995 to 1,000 in 2005.[54] Rarely in the history of the exam has the pass rate exceeded 5 percent. A decided majority of the law graduates eventually ended up with employment outside the legal ballpark. "To the average Korean, however, this exam has been a symbol of fairness, equality, and most of all, a decisive opportunity to achieve a Korean dream."[55] The new three-year, Western-style law school system went into effect in 2009. This system gradually replaced the previous bar exam, with the last test using the old format administered in 2017. Under the former system, anyone regardless of education could take the bar

52) Constitutional Court [Const. Ct.], 2014Hun-Ma1046, Mar. 31, 2016 (S. Kor.).
53) Kyong-Whan Ahn, *Law Reform in Korea and the Agenda of "Graduate Law School"*, 24 WIS. INT'L L.J. 223, 227 (2006).
54) Chang-Rok Kim, *The National Bar Examination in Korea*, 24 WIS. INT'L L.J. 243, 257 (2006).
55) Ahn, *supra* note 52, at 227.

exam. Under the new system, only a four-year-college graduate can apply to law school, and law school graduates are required to take the new bar exam after graduation.

In 2016, the Constitutional Court of Korea ruled that the National Bar Examination Act, a law which stipulated that the state-administered bar exam be abolished by 2017, was constitutional.[56] A group of law students filed suit, claiming the law is unconstitutional as it makes entering and graduating from a law school the only route to becoming a lawyer, which unduly burdens low-income students and therefore, violates their constitutional rights to the freedom to choose their occupations. The Constitutional Court of Korea ruled that the provision that stipulated the abolishment of the state-administered bar exam was constitutional and that a transition period of eight years was long enough to protect the interests or trust of exam takers.

Although it has been eight years since its introduction, law school continues to be a target of criticism. Let alone the discussion about which system is better between the old bar exam and the law school, an attempt to diagnose the problem and modify the system through analysis of law school admission system from a constitutional perspective could contribute to the law school system.

B. Examination of the Constitutionality of the Korean Law School Admission System

Since the previous bar exam was abolished in 2017, gaining admission to and graduating from a law school are the only path toward becoming a practicing attorney in Korea. In 2018, Korean law schools received 10,520 applications, but only 2,000 students were admitted.[57] Therefore, a claim can be made that the country's current law school admission practices infringe upon the occupational freedom of those applicants denied admission.

1. Scope of Protection

A lawyer is an occupation, in that it is unprohibited and aims to be of a

56) Constitutional Court [Const. Ct.], 2016Hun-Ma267 (consol.), Sept. 29, 2016 (S. Kor.).
57) Taeyun Gong, *LEET 1Man 502Myeong Jiwon . . . Seoul Eungsija 74% 50Seisang Goryeongja-do 99Myeong Dalhae [10,502 people apply for LEET]*, HANGUKGYEONGJE (June 16, 2018), http://news.hankyung.com/article/201806161158i.

certain duration and to be the source of livelihood. Therefore, being a lawyer is within the scope of protection of occupational freedom. Under the Act on the Establishment and Management of Professional Law Schools and the National Bar Examination Act, it is necessary to enter and graduate law school to take a bar exam in order to be a lawyer. Hence, admission to law school is the irreplaceable prerequisite to becoming a lawyer. Therefore, to protect the occupational freedom to be a lawyer, the right to enter law school should be also included in the scope of occupational freedom. If this is negated because of time gap between admission to law school and being a lawyer or because it is not sufficient condition to be a lawyer, the state would be able to make abuse of it and put many conditions as a front stage of occupational license system arbitrarily to put a restraint on occupational freedom. The German Federal Constitution Court also ruled in the *Numerus Clausus* Case that education is the stage preceding the start of a profession and that a restriction on the choice of the educational path must be treated as a restriction on the choice of profession, considering the integral relationship between training for an occupation and practicing it. This is similar to the ruling in the law school Case.[58]

2. Interference

Article 37 of Korean Constitution states that "the freedoms and rights of citizens may be restricted by act only when necessary for national security, the maintenance of law and order, or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated". So, unlike the German constitution, the issue of existence of proviso does not matter in the Korean constitution. Every basic right can be restricted by law if it satisfies the proportionality principle and no essential aspect of the freedom or right shall be violated.

To check if there is a government's interference with students' right to enter law school, we need to look at the act on the establishment and management of professional law schools. Article 7 of the Act states that the Minister of Education should prescribe the total number of enrollments. During the last ten years, the total number of incoming students has been 2,000 students every year. According to Article 7(3), the minister grants authorization to law schools, and decides each law school's total number of enrollment within the limit

58) Constitutional Court [Const. Ct.], 2014Hun-Ma1046, Mar. 31, 2016 (S. Kor.).

prescribed by Presidential Decree, which is currently 150 students. Under this act, the Korean Education Ministry in September 2008 authorized 25 law schools to operate a three-year professional graduate school program. Seoul National University (SNU) Law School currently enrolls 150 students in each class of the Law School J.D. program.

Table 1: Universities with their Government Approved Annual Enrollment of Students[59]

Total Number of Approved Annual Enrollment	Name of Law School
150 students	Seoul National University Law School
120 students	Jeonnam National University Law School, Korea University Law School, Kyungpook National University Law School, Pusan National University Law School, Sungkyunkwan University Law School, Yonsei University Law School
100 students	Chungnam National University Law School, Hanyang University Law School Law School, Ewha Woman's University Law School
80 students	Chonbuk National University Law School, Dong-A University Law School
70 students	Chungbuk National University Law School, Yeungnam University Law School
60 students	Kyunghee University Law School, Wonkwang University Law School
50 students	University of Seoul Law School, Hankuk University of Foreign Studies Law School, Ajou University Law School, Chung-Ang University Law School, Inha University Law School
40 students	Kangwon National University Law School, Jeju National University Law School, Sogang University Law School, Konkuk University Law School

Accordingly, the Act on the establishment and management of professional law schools is similar to *Numerus Clausus* or an absolute admission ceiling. This Act puts an upper limit that an entering class could not expand regardless of the number of qualified applicants. This act can infringe upon qualified applicants who get denied law school admission, and it corresponds to the regulation on the choice of occupation. The next question is if law school

---

59) *Gyoyukbu, Roseukul Yebiin-ga Daehag 25gae Balpyo*, NEWS.KOREA.OR.KR. (Feb. 05, 2008), http://news.koreanbar.or.kr/news/articleView.html?idxno=2446.

admission with the absolute limit on the total number of enrollments is a regulation based on subjective condition or a regulation based on objective condition.

3. Justifying Ground

i. A Regulation Based on Objective Condition

If the act functions to allow only applicants who possess proper qualifications, which is the main purpose of occupational licensing system, such regulation would be deemed subjective condition and relatively easy to be justified. Article 23 of Act on the Establishment and Management of Professional Law Schools states about the selection of students. Article 23(2) states that each law school shall use the undergraduate grade point average (GPA), the score for the test measuring the aptitude relating to abilities to become a legal professional ("Legal Education Eligibility Test" or LEET), foreign language proficiency of an applicant as admissions materials, and may use other materials, such as community services and volunteer activities as admissions materials. A law school shall not conduct a test gauging legal knowledge to use the scores therefrom as admissions materials.

It would require close examination of the law school admission process to determine if such admission standard is subjective or objective condition. The applicant's GPA and LEET score are known to be the two main factors that affect admission results. Although the LEET was intended to test if applicants are eligible to study in law school, its character is now degenerated into an IQ (intelligence quotient) test due to the intense competition. The LEET score depends much on the innate characteristics such as fast reading and short-term memorizing skills. A criticism can be raised that these skills or scores have nothing to do with or have no much connection with becoming a good lawyer. Some scholars argue in their studies that there is no correlation between LEET score and GPA in law school.[60] The LEET score is graded on a curve, which also shows that it is not a test which evaluates if applicants are eligible to get the legal education. It is degenerated into a test which evaluates how faster you can read a long text and answer the multiple-choice questions compared to other

60) Duol Kim, *Present and Future of the Law School System in Korea: An Outsider's View*, 13 KOR. L. & ECON. ASS'N 187 (2016).

applicants. To get a higher LEET score, many students repeat taking the LEET. To raise GPA, students even take the same class several times until they finally get an A.[61] Because the admission requires applicant's superiority over other applicants rather than applicant's personal qualification itself, it can be deemed as objective conditions irrelevant to one's personal qualifications and over which one exercises no control. Although the law school states it does not discriminate or appraise students by which undergraduate the applicants graduated, most law school students are graduate of high-ranking universities, and about one-half of law school students are graduates of so-called "SKY" universities which are Seoul National University, Korea University, and Yonsei University, the top universities in the Republic of Korea. Admission officers make an excuse that such high rate of SKY graduates in law school is not discrimination but the result of fair competition between "SKY" graduates and non-SKY graduates. However, the statistics accumulated through students' voluntary disclosure of their private scores show that graduates of lower-ranking colleges need higher GPAs, LEET scores, English scores to get into the law school than applicants from higher-ranking college undergraduates.[62] Finally, an evaluation sheet of a private law school was leaked which showed universities were categorized into five levels depending on their prestige, in which applicants of the highest ranked universities received 70 out of 70 points while applicants of the lowest universities only received 42 out of 70 points.[63]

Therefore, such law school admission mainly based on GPA and LEET scores can be regarded as an "undue burden" on freedom of occupational choice. This is similar to the ruling in the *Numerus Clausus II* Case and the most recent *Numerus Clausus* Case in which the court ruled that the new admission criteria were also unconstitutional since there was too much emphasis on scholastic achievement.[64] In the most recent *Numerus Clausus* Case, the Court stated,

---

61) Kyung-Pil Kim, *Seuoldae Oegyohakjeongong Joreopsaeng Jeonwon A Hakjeom . . . Hakjeom Peojuneun Seouldae [All SNU Foreign Relation Majors Graduates with an A]*, CHOSUN DAILY (June 9, 2017), http://news.chosun.com/site/data/html_dir/2017/06/09/2017060900258.html.

62) SEOROYEON, http://cafe.daum.net/snuleet (last visited Oct. 16, 2018).

63) Jinmyeong Seon, *'SKY-neun S-deunggeub' . . . Sariproseukur Chulsindaehag Kaseuteuje [The Caste System of Private Law School]*, HANKYOREH (June2, 2016), http://www.hani.co.kr/arti/society/society_general/746541.html.

64) KOMMERS, *supra* note 29, at 288; Bundesverfassungsgerict [BVERFGE] [Federal Constitutional Court] 1 BvL 3/14, Dec. 18,2017, at 202-10 (Ger.), http://www.bverfg.de/e/ls20171219_1bvl000314en.html.

"In any case, this holds true for the current situation, in which the number of applicants far exceeds the available spots for medical studies, only a small proportion of Abitur graduates are admitted and average *Abitur* grades have become so similar at the top level that the significance of their remaining differences, expressed in decimal points, is substantially diminished. If only the applications of those who have obtained the very best grades can succeed on the basis of their average *Abitur* grade, and only by way of a narrow differentiation among decimal points, *Abitur* grades are not a sufficient selection criterion to guarantee equality-based admissions on the basis of aptitude. It is very likely that there are many persons who are equally or even better suited for medical studies, in particular among the many applicants who have also obtained very good *Abitur* grades, but whose grades are some decimal points lower. In such a situation, aptitude can no longer be determined with sufficient certainty based on the *Abitur* grade. The minor differences between *Abitur* grades are not sufficiently reliable to indicate differences in aptitude."[65]

Table 2: A List of the Undergraduate Schools Represented by Korean Law School Students for Last Eight Years (Total Students: 16,554)[66]

Rank	College	# of students (%)	Rank	College	# of students (%)
1	Seoul National University	3210 (19.39)	26	Inha University	82 (0.50)
2	Korea University	2414 (14.58)	27	Yeungnam University	78 (0.47)
3	Yonsei University	2346 (14.17)	28	Wonkwang University	71 (0.43)
4	Ewha Women University	1101 (6.65)	29	Pohang University of Science and Technology	67 (0.40)
5	Sungkyunkwan University	1001 (6.05)	30	Chungbuk National University	65 (0.39)
6	Hanyang University	896 (5.41)	31	Kookmin University	53 (0.32)
7	Kyunhee Universty	428 (2.59)	32	Soongsil University	51 (0.31)
8	Sogang University	397 (2.40)	33	Kangwon National University	43 (0.26)

65) Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court]1 BvL 3/14, Dec. 18, 2017, at 202 (Ger.), http://www.bverfg.de/e/ls20171219_1bvl000314en.html.

66) Eunji Yun, *2017 Seouldaeroseukul Hapgyeokja . . . "Sky Chulsin 88.7% [88.7% of the Class of 2017 in Seoul Law School are SKY Graduates]*, VERITAS (July 25, 2017, 4:28 PM), http://www.veritas-a.com/news/articleView.html?idxno=90503.

Rank	College	# of students (%)	Rank	College	# of students (%)
9	Hankuk University of Foreign Studies	390 (2.36)	34	Dankook University	40 (0.24)
10	Busan University	372 (2.25)	35	Chosun University	39 (0.24)
11	Choong-Ang University	338 (2.04)	36	Jeju National University	30 (0.18)
12	Kyung-Book Univesity	304 (1.84)	37	the Catholic University of Korea	28 (0.17)
13	Chon-nam University	253 (1.53)	38	Sungshin Women's University	26 (0.16)
14	KAIST (Korea Advanced Institute of Science and Technology Constitution)	210 (1.27)	39	Korea Maritime and Ocean University	23 (0.14)
15	University of Seoul	205 (1.24)	40	Korea National Open University	21 (0.13)
16	Konkuk University	186 (1.12)	41	Kwangwoon University	19 (0.11)
17	Sookmyung Women University	182 (1.10)	42	Myongji University	17 (0.10)
18	Korean National Police University	145 (0.88)	43	Pukyong National University	16 (0.10)
19	Hongik University	133 (0.80)	44	Korea Aerospace University	15 (0.09)
20	Chonbuk National University	126 (0.76)	45	Seoul National University of Education	14 (0.08)
21	Chungnam National University	125 (0.75)	46	Sejong University	14 (0.08)
22	Dong-A University	119 (0.72)	47	Incheon National University	13 (0.08)
23	Dongguk University	104 (0.63)	48	Youngsan University	12 (0.07)
24	Ajou University	98 (0.59)	49	Korea Military Army	12 (0.07)
25	Handong Global University	91 (0.55)	50	Keimyung University	11 (0.07)

The competition to get into law school became so intense that it reached the unnecessary level which results in an extreme inefficiency of human resource. Such results are exactly the opposite of what the Court stated as the justifying ground of introducing law school. The Constitutional Court of Korea emphasized the importance of public good such as efficiency of human resource as the legitimate purpose of introduction of law school.[67] Some students even pass other professional occupation licensure tests such as accountant exam, pharmacist exam and patent attorney exam not to exercise these professions,

67) Constitutional Court [Const. Ct.] 98Hun-Ga16, April 27, 2000 (S. Kor.).

but to increase their chance of law school admission. Moreover, many law school students quit the school in the middle of their study after they already finished their first year or second year to start their first year again in the higher-ranking law school.[68] For example, in 2016, among 150 SNU Law School's first-year students, more than 20 students corresponded to this case; application of the current law school students to higher-ranking law school triggers a chain reaction, which makes the law school admission even more difficult than it would be in the normal situation. Before law degree in undergraduate program in elite universities was abolished and replaced by law school, the Ministry of Education and Human Resources had repeatedly manifested its observation that hyper-intensive competition for the university entrance exams was partly caused by misplacing law and medical education in the undergraduate program.[69] The same hyper-intensive competition is recurring in law school admission. Such hyper-intensive competition does not accord with the goal of introducing law schools in Korea, which was to resolve many social problems (e.g., hampering social productivity and distorting the distribution of human resources).

Lastly, the law requires the Minister of Education to prescribe the total number of enrollments after consideration of all relevant circumstances, including smooth supply of legal services for the public and the supply and demand status of legal professionals. The total number of enrollments has been 2000, which has not been changed for the last nine years, on which a doubt could be cast if such number is the conclusion came from elaborate investigations and detailed considerations. To sum up, the fixed absolute number of enrollments brings on excessive competition in law school admission and many well-qualified applicants are denied admissions. Therefore, we can conclude that the current law school admission conforms to the state's regulation on the choice of occupation based on objective condition. According to the theory of 3 steps, such restriction is legitimate only if it is absolutely necessary to protect a community's interest of overriding importance, and the majority opinion of Korean constitutional law scholars agrees on this idea.[70] Embracing the theory of 3 steps, the Constitutional Court of Korea also

---

68) Seokho Hong, *Sikji Ahnneun Bansu Yeolpung… Roseukurui Gomin*, Dongailbo (Oct1, 2018), https://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=102&oid=020&aid=0003172219; Seokho Hong, '*Bansu'ui Teocce Geollin Roseukul…Joheun Ropeom? Seupek Setak? 'Roseukul Olmgyeotagi' simgak*, Dongailbo (Sep30, 2018), https://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=102&oid=020&aid=0003172149.

69) Ahn, *supra* note 52, at 235.

70) JEONG, *supra* note 6, at 691; YOUNG HUH, HANGUKHEONBEOPRON [KOREAN CONSTITUTION] 467 (11th ed. 2015); HUIYEOL GYE, HEONBEOPAK (JUNG) [CONSTITUTIONAL STUDY] 525 (2004).

applies the test of proportionality in strict sense when freedom of occupational choices is restricted by objective condition.[71] However, the Constitutional Court of Korea has been comparatively lenient about the scope of legislators' discretion in relation to the design and management of the occupational licensing system. There have been few instances where the Constitutional Court of Korea recognized the need to protect a community's interest of overriding importance to justify the state's regulation on the choice of occupation based on objective condition.[72] Therefore, we can find that the Theory of 3 Steps collides with the Constitutional Court's leniency about the scope of legislators' discretion in relation to the design and management of the occupational licensing system when it is a regulation based on objective condition.

ii. A Regulation Based on Subjective Condition

In the 96Hun-Ka2 Case, the Constitutional Court made decisions on both assumptions: 1) the Act on the May Democratization demonstrates the characteristics of so-called non-genuine retroactivity and 2) the Act demonstrates the characteristics of so-called genuine retroactivity. Similarly, I continue to examine the constitutionality of the law school admission system on the assumption the current law school admission conforms to the state's regulation on the choice of occupation based on subjective condition.

a. The Existence of a Need to Address Highly Probable Dangers to Community Interest of Overriding Importance

According to standards of review on the subjective condition in the 3-steps theory, we need to see if such admission is needed to protect community interest of overriding importance. And such regulation should not violate the principle of proportionality.

71) Constitutional Court [Const. Ct.] 2001Hun-Ma614, April 25, 2002 (S. Kor.); Constitutional Court [Const. Ct.] 89Hun-Ma178, Oct. 15, 1990 (S. Kor.); Constitutional Court [Const. Ct.] 90Hun-Ga48, Nov. 19, 1990 (S. Kor.).

72) For examples of cases in which the Court held unconstitutional, *see* Constitutional Court [Const. Ct.] 98Hun-Ma52, July 20, 2000 (S. Kor.); Constitutional Court [Const. Ct.] 2001Hun-Ma156, Sept. 25, 2003 (S. Kor.).

b. The Need to Adjust Demand and Supply of Lawyers and Provide Well-Qualified Lawyers to Market

The first candidate for such community interest of overriding importance is the adjustment of demand and supply of lawyers. If the purpose of the quota of total incoming law school students is to restrict entry into an occupation, thereby reducing competition among lawyers, according to the German Federal Court's decision, such reason does not justify the absolute admission ceiling, and the admission system violates the Constitution. Additionally, Article 7(1) of the Act which lets the Minister of Education consider the supply and demand status of legal professionals to prescribe the total number of enrollments can be found unconstitutional. Another possible candidate of the community interest of overriding importance is that such strict law school admission process is required to filter out disqualified students and train quality legal professionals.

According to the 2007 report of Bank of Korea on the analysis on the entry barrier of Korea's service industry, in 2007, capita per a lawyer in South Korea was 5,758, which was the highest among OECD nations; capita per a lawyer of Germany was 594, that of the United States was 267 and that of France is 1,332[73]. During the last ten years, the gap between Korea and other countries decreased, partly due to the introduction of law school, but still, the Republic of Korea needs more lawyers. The ratio of population to the number of lawyers is still high compared to other developed countries. The most recent study by Konkuk University law school professor Sang-Hee Han showed that lawyers per 100,000 capita of the United States, Germany and Korea is 392.5, 200.5 and 35.3, which shows that Korea needs more lawyers.[74] Many citizens still do not use legal services because of high legal fees, not because they are concerned about the legal service quality. An increase in the supply of lawyers during the last few years resulted in the reduction of service fee, which is still expensive. Moreover, as I already said above, many well-qualified law school applicants get denied admission because total number of law school enrollments is severely restricted. Hence, the excuse that the limit on the number of law school students is necessary to keep the quality of legal service cannot be accepted.

---

73) BYUNG-HEE LEE ET AL., U-RI NARA SEOBISEUEOBUI JINIPJANBYEOK HYEONHWANG BUNSEOK [ANALYSIS OF THE LEVEL OF ENTRY BARRIER OF SOUTH KOREAN SERVICE INDUSTRIES] (2007).

74) Bo-Hee Park, *Byeonhosaga Maneumyeon Wae Munjedoelkka [Why Are There Problems from Having Too Many Lawyers?]*, THE L (Oct. 17, 2016, 10:46 AM), http://thel.mt.co.kr/newsView.html?no=2016101417008225291.

The arguments discussed above have limitations in that the number of attorneys per population should be considered along with the change in the overall population. Therefore, it is necessary to consider the current number of attorneys with the future number of attorneys of population, which needs further studies.

c. The Need to Maintain the Quality of Law School Education and Train Quality Legal Professionals

Neither the need to retain the quality of Law School education and train quality legal professionals can be a need to address highly probable dangers to community interest of overriding importance since increasing the number of law school students would have almost no effect on the quality of law school education. The law school aimed for more interactive and debate-based lecture, and, for that purpose, Article 16 of the act requires the ratio of student to professor to be lower than fifteen. Yet, most classes students take to prepare for the bar exam are lecture-based, and the number of students does not affect the quality of such classes. As the bar exam passing rate descends every year, more and more students avoid taking the subjects which are unhelpful to take the bar exam, and law schools are gradually resembling the private institutions where students took lessons to prepare for the old bar exam.

That is, the law school education is in the worst condition, which has nothing to do with the current number of students enrolled. Even though it is correct that the need to maintain the quality of law school education and train quality legal professional is an urgent problem of Korean law school which is to be solved, controlling the number of students is not the right way to achieve that goal. Instead, an increase in the number of students can lead to an increase in total student tuition, which can be used to secure enough school funds to recruit excellent faculties.

d. If Restriction is Necessary: Alternatives which are Less Intrusive

Moreover, not every law school student needs to become a lawyer. Unless every law school students have legitimate confidence that they can be a lawyer after graduation, the concern about quality of legal service is a problem that can be solved by lowering the pass rate of the bar exam, not by restricting the total

number of enrollments in law school; therefore, it is not necessary to preclude students who want to study in law school beforehand. Besides this, there could exist many alternatives which are less intrusive that could replace restricting the total number of enrollments in law school.

Although it might be inappropriate to simply compare the lawyer licensure system of Germany and South Korea, ignoring all the different social contexts between two nations, we may refer to the German case to find our own alternatives. In the past law school Case, the Constitutional Court of Korea also referred to current conditions in other nations, commenting about limit on the attempt at the bar exam and the bar exam passing rates in other nations such as the United States, Germany and Japan.[75] The path to becoming a lawyer in Germany is a long process that can take seven years or more. Qualifying as a lawyer in Germany is a two-step system: first, a future lawyer must study at a university to obtain the first degree in law (*Erste Juristische Prüfung*). Second, the candidate must go through a mandatory clerkship with several stages in order to obtain the necessary practical skills at the end of which the candidate must pass a set of written and oral examinations (*Zweites Staatsexamen*).[76] Universities often offer a dedicated law study program. Once the student has passed all requirements including the school exams, a foreign language skills test, completion of internships and the first state exam, he or she has obtained the first law degree. Then, the graduate may work as a legal advisor in companies, but he or she is not entitled to act as counsel before courts and cannot become a judge. In order to become a fully practicing lawyer (*Volljurist*), the candidate must pass the second state exam. Before the second state exam can be completed, the graduate must undertake a mandatory clerkship that takes two years. The aim of the clerkship and the second state exam is to learn practical skills in the different legal professions as well as to get to know the work of practitioners. After having passed the second state exam, the lawyer now can become a counsel and represent clients before German courts or may become a judge.

Although Korean law school system is originated from that of the United States, the Republic of Korea can take account of merits and strengths of the German legal education system for its improvement of the current law school. It is more likely to find some instructions or insights to improve law system from the German system than from other systems because Korean law is based

75) Constitutional Court [Const. Ct.] 2016Hun-Ma47, Sep 29, 2016 (S. Kor.).
76) Alexander Grimm, *How to Qualify as a Lawyer in Germany*, IBA, https://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Germany.aspx.

on the Continental law and accommodated many parts of it from Germany. On the other hand, there exists a discord between American law school and Korean law school partly because of their difference in the legal system; some lawyers who oppose to law school system may argue that huge volume of Korean law makes it impossible to master eight basic laws of Korean law in three years, which is different from American law school

If what we are worried about is the quality of legal service, we can also let a first-year law school student pass the exam after their first-year law school study in order for them to continue their study of law. We can also divide the state level exam into two stages like Germany does and requires extra test and apprentice period before representing clients before German courts.

Such improvements or modifications can decrease the degree of regulation on occupational freedom while protecting the community interest of overriding importance, which is a way to make a balance between these two values. Hence, the current law school system can be found unconstitutional unless there are substantial reformation and adoption of alternatives to fix its current problems. Some people suggest we need to introduce the evening law school or open law school in Korea National Open University which provides distance learning programs so as to provide more people opportunities to get the education in law school.

e. Additional Requirements Suggested in *Numerus Clausus* Case & the Right to Education in Korean Law School

Even if the need to protect community interest of overriding importance is sustained, according to the Court's decision in *Numerus Clausus* Case, an absolute restriction on the admission of beginning students is constitutional only if 1) the legislature imposes the restriction only when absolutely necessary, after having exhausted currently available publicly funded facilities and 2) the statute bases the choice and distribution of openings on equitable criteria and provides each applicant with the opportunity to compete for an opening.

Korean law schools are regulated by Act on the Establishment and Management of Professional Law Schools, not by Higher Education Act which regulates universities and colleges. Different from universities in general, the government has more discretion in authorizing the establishment of law school, and the government continues to have mighty authority over supervising,

managing the operation of law schools. Article 5 of the Act even stipulates that the state itself may establish a law school. Also, Article 3 stipulates about the responsibilities of the state that the state shall take necessary measures, including the formulation of the financial support plan for training of legal professionals. These features show that all private and public law schools can be included in the domain of public education whose purpose is to train legal professionals or show that law school is education monopolized by the government. Hence, we can assess private schools operate law school as non-governmental bodies in the exercise of powers delegated by the state. Considering that many prestigious universities failed to get the authorization from the ministry of education to establish law schools nevertheless they have the department of law and law professors who are qualified to provide high-quality legal education or plenty resources to provide legal education, it is obvious that currently available facilities are not exhausted. The state did not exhaust currently available publicly funded facilities in Korean law school, which makes it unconstitutional. All the schools within the zone of reasonable expectation tried to gain inclusion. Schools were in unanimous accord to advocate for the increase of the total size, and the SNU announced its position demanding that minimum size of the class should be no smaller than 300.[77]

f. Law School's Exercise of Broad Discretion on the Selection of Students

The Court in *Numerus Clausus* Case also stated that the legislator must itself establish the rules for selection and, if the legislature delegates its authority, it must at least determine the selection criteria and their order or importance. Yet, the standard the law school act sets is too abstract or general to satisfy such requirement. It had not fixed the criteria for admission itself but had delegated such decisions to each law school. Here a conflict between the legislator's obligation to determine the selection criteria and their order or importance and the schools' right to select students according to their own criteria may happen.

Although Article 23(3) states that each law school shall establish and publicly announce admission process plans for the fair selection of admitted students, admission process plans do not necessarily include the concrete selection criteria, so a broad scope of discretion on the selection of students is

77) Ahn, *supra* note 52, at 237.

given to each law school. The Constitutional Court of Korea emphasized that each law school has a broad scope of discretion on how much the English score weigh in law school admission.[78] This also can be unconstitutional according to the court's ruling in *Numerus Clausus* Case that the act must at least determine the selection criteria and their order or importance.

After the possibility of illegal or unfair law school admission taking students' personal connection, the social status of parents into consideration was raised, some universities voluntarily disclosed their criteria, but still, some law schools refused to make their admission criteria public. Recently, there was a case in the administrative court filed by law school applicants, asking seven law schools including Seoul National University law school to make its admission criteria which include substantive record reflection rate of each scores public, and the applicant won the case.[79] As I mentioned above, such transparency was also an important element in the German Court's decision of the most recent *Numerus Clausus* case.[80]

Hence, unless Article 23(3) is modified or universities disclose its admission criteria accurately with enough details, this could be also unconstitutional. If the state or law schools refuse to do so, it is desirable for the court to extend its control and regulation over schools and ministry of education and narrow down the discretion of university officials and the ministry of education, forcing them to revise unfair and unconstitutional standards governing law school admission. The Constitutional Court of Korea also stated that "some universities that run professional law schools have been criticized for the unfairness of their admission processes or substandard curricula. At this stage, however, collective efforts are required to help these professional law schools become established, in accordance with the purpose of their foundation" in the past law school decision.[81]

g. Violation of the Right to Equality

A principle of equality guarantees equal treatment and protection against

78) Constitutional Court [Const. Ct.] 2016Hun-Ma550, Dec. 29, 2016 (S. Kor.).
79) Sung Jin Lee, *Sabeopsiheom Junbisaeng "Roseukul Siljechaejeomgijun Gonggae" Seungso [The Bar Exam Taker Wins the Case Against Law School]*, THE LAW JOURNAL (Dec. 26 2016m 2:28 PM), http://www.lec.co.kr/news/articleView.html?idxno=43010.
80) Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BVL 3/14, Dec. 18, 2017, at 144-45 (Ger.), http://www.bverfg.de/e/ls20171219_1bvl000314en.html.
81) Constitutional Court [Const. Ct.] 2012Hun-Ma1002, Sep. 29, 2016 (S. Kor.).

discrimination by the state. The law school admission may violate the right to equality since it differentiates students accepted and students denied by giving the privilege of being a lawyer to a student accepted by the admission standard that cannot be justified such as age, affiliated school, wealth and other backgrounds.

VI. Conclusion

Under the selective and restrictive law school program, a very limited number of Korean youths are given the opportunity to become lawyers. Many people dream of becoming a lawyer, regarding it as a way to achieve success, elevate their social standing and gain both fame and wealth at the same time.[82] Choosing an occupation for such purposes does not accord with the meaning of protection of occupational freedom; it is not something that deserves constitutional protection. It is an illusion that only a few chosen deserve to be lawyers because lawyers are special. In Korea, a lawyer still earns economic rent derived from the high barrier to entry, which violates free market economy. Limiting the number of new lawyers for the purpose of balancing supply and demand cannot be justified. Even if more lawyers enter the legal market, the quality of legal service would not decrease, as lowering the barrier to entry would instead result in limitless competition between lawyers. Moreover, not every law school graduate will become a lawyer: there are many occupations in which law school graduates can work that allow them to utilize their education. How law schools and graduate schools of law can go side by side harmoniously is another issue.

As the Constitutional Court of Korea has dismissed actions related to law schools in the past by allowing the extensive discretion of legislators regarding a licensing system, it is unlikely that the Court will adjudicate law school admission system to be unconstitutional. However, if the Court does not rule it unconstitutional, it does not necessarily mean that there are no problems in the law school system from a constitutional perspective.

Ex-president Roh Moo-Hyun waged a political fight against the Grand National Party to introduce the law school system in Korea because he felt

82) Kyong-Whan Ahn, *The Growth of the Size of the Bar and the Changes in Lawyer's Role: Korea's Dilemma*, *in* LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY 119, 119-20 (Philip S. C. Lewis ed., 1994).

disillusioned by the privilege lawyers enjoyed and the dirty and unjustified cartel legal professionals set up in the Republic of Korea.[83] However, if there is no improvement in the current law school system, the law school system will be the same as the bar exam system, and top law school graduates may receive the privileges lawyers previously enjoyed. To address this, we might see an expansion of the entrance quota for law schools, as well as approval of new law schools in universities that have applied for approval and are ready to run a law school and open an online law school program or evening law school. We need to make being a lawyer an occupation that is not special at all. As more people obtain a license, fewer will want to obtain it and the equilibrium will be restored.

83) Ahn, *supra* note 52, at 224-42.

Bibliography

Books

AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY (2012).
BODO PIEROTH & BERNHARD SCHLINK, GRUNDRECHTE STAATSRECHT II [FUNDAMENTAL RIGHTS II] (2003).
BYUNG-HEE LEE ET AL., U-RI NARA SEOBISEUEOBUI JINIPJANBYEOK HYEONHWANG BUNSEOK [ANALYSIS OF THE LEVEL OF ENTRY BARRIER OF SOUTH KOREAN SERVICE INDUSTRIES] (2007).
DONALD P. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY (2d ed. 1997).
EKKEHART STEIN & GÖTZ FRANK, STAATSRECHT [CONSTITUTIONAL LAW] (2010).
HUIYEOL GYE, HEONBEOPAK (JUNG) [CONSTITUTIONAL STUDY] (2004).
JOHAN STRYDOM, INTRODUCTION TO MARKETING (3d ed. 2004).
JONGSEOP JEONG, HEONBEOPAGWOLLON [THE THEORY OF CONSTITUTIONAL LAW] (11th ed. 2016).
JUSTIN COLLINGS, DEMOCRACY'S GUARDIANS: A HISTORY OF THE GERMAN FEDERAL CONSTITUTIONAL COURT 1951-2001 (2015).
Kyong-Whan Ahn, *The Growth of the Size of the Bar and the Changes in Lawyer's Role: Korea's Dilemma*, *in* LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY 119 (Philip S. C. Lewis ed., 1994).
LEO TOLSTOY & NATHAN H. DOLE, WHAT MEN LIVE BY (1888).
NAK IN SUNG, HEONBEOPAK [CONSTITUTIONAL STUDY] (18th ed. 2018).
RALF POSCHER, GRUNDRECHTE ALS ABWEHRRECHTE: REFLEXIVE REGELUNG RECHTLICH GEORDNETER FREIHEIT (2003).
SABINE MICHALOWSKI & LORNA WOODS, GERMAN CONSTITUTIONAL LAW: THE PROTECTION OF LIBERTIES (1999).
THOMAS FLEINER & LIDIJA BASTA FLEINER, CONSTITUTIONAL DEMOCRACY IN A MULTICULTURAL AND GLOBALISED WORLD (2009).
YOUNG HUH, HANGUKHEONBEOPRON [KOREAN CONSTITUTION] (11th ed. 2015).

Journals and Other Periodic Materials

Anne O. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291 (1974).

Bukan, Igeosi Gunggeumhaeyo Seumulhan Beonjjae: Jigeopseontaequi Jayu Geurigo Seonhojikjongeun? [Career Preferences and the Freedom to Choose a Career], TONGIL HANGUK, June 1, 2013.

Chang-Rok Kim, *Hanguk Roseukuljedoui Hyeondangyewa Jeonmang [The Current Status and Prospect of the Korean Law School System]*, 32 KYUNGPOOK NAT'L L.J. 23 (2010).

Chang-Rok Kim, *The National Bar Examination in Korea*, 24 WIS. INT'L L.J. 243 (2006).

David Currie, *Positive and Negative Constitutional Rights*, 53 U. CHI. L. REV. 864 (1986).

Dick M. Carpenter et al., *License to Work: A National Study of Burdens from Occupational Licensing*, INST. FOR JUST., May 2012.

Donald P. Kommers, *German Constitutionalism: A Prolegomenon*, 40 EMORY L.J. 837 (1991).

Duol Kim, *Present and Future of the Law School System in Korea: An Outsider's View*, 13 KOR. L. & ECON. ASS'N 187 (2016).

Walter Gellhorn, *The Abuse of Occupational Licensing*, 44 U. CHI. L. REV. 6 (1976).

Kyong-Whan Ahn, *Law Reform in Korea and the Agenda of "Graduate Law School"*, 24 WIS. INT'L L.J. 223 (2006).

Cases

Bundesverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BVR 596/56, June 11, 1958 (Ger.).

Bundersverfassungsgericht [BVERFGE] [Federal Constitutional Court] 1 BVL 32/70, July 18, 1972 (Ger.).

Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] 1 BvL 3/14, Dec. 18, 2017 (Ger.).

Constitutional Court [Const. Ct.], 98Hun-Ma52, July 20, 2000 (S. Kor.).

Constitutional Court [Const. Ct.], 89Hun-Ma178, Oct. 15, 1990 (S. Kor.).

Constitutional Court [Const. Ct.], 90Hun-Ga48, Nov. 19, 1990 (S. Kor.).

Constitutional Court [Const. Ct.], 92Hun-Ma80, May 13, 1993 (S. Kor.).

Constitutional Court [Const. Ct.], 90Hun-Ba43, June 29, 1995 (S. Kor.).
Constitutional Court [Const. Ct.], 94Hun-Ma113, Aug. 29, 1996 (S. Kor.).
Constitutional Court [Const. Ct.], 96Hun-Ma109, Oct. 30, 1997 (S. Kor.).
Constitutional Court [Const. Ct.], 98Hun-Ga16, Apr. 27, 2000 (S. Kor.).
Constitutional Court [Const. Ct.], 2001Hun-Ma614, Apr. 25, 2002 (S. Kor.).
Constitutional Court [Const. Ct.], 2001Hun-Ma156, Sept. 25, 2003 (S. Kor.).
Constitutional Court [Const. Ct.], 2005Hun-Ma997, Apr. 27, 2006 (S. Kor.).
Constitutional Court [Const. Ct.], 2008Hun-Ma370, Feb. 26, 2009 (S. Kor.).
Constitutional Court [Const. Ct.], 2013Hun-Ma359, Aug. 28, 2014 (S. Kor.).
Constitutional Court [Const. Ct.], 2013Hun-Da1, Dec. 19, 2014 (S. Kor.).
Constitutional Court [Const. Ct.], 2015Hun-Ba65, Sept. 29, 2016 (S. Kor.).
Constitutional Court [Const. Ct.], 2016Hun-Ma267 (consol.), Sept. 29, 2016 (S. Kor.).

Internet Sources

Alexander Grimm, *How to Qualify as a Lawyer in Germany*, IBA, https://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Germany.aspx.

Bo-Hee Park, *Byeonhosaga Maneumyeon Wae Munjedoelkka [Why Are There Problems from Having Too Many Lawyers?]*, THE L (Oct. 17, 2016, 10:46 AM), http://thel.mt.co.kr/newsView.html?no=2016101417008225291.

Eunji Yun, *2017 Seouldaeroseukul Hapgyeokja . . . "Sky Chulsin 88.7% [88.7% of the Class of 2017 in Seoul Law School are SKY Graduates]*, VERITAS (July 25, 2017, 4:28 PM), http://www.veritas-a.com/news/articleView.html?idxno=90503.

Gyoyukbu, Roseukul Yebiin-ga Daehag 25gae Balpyo, NEWS.KOREA.OR.KR. (Feb. 05, 2008), http://news.koreanbar.or.kr/news/articleView.html?idxno=2446.

Jinmyeong Seon, *'SKY-neun S-deunggeub' . . . Sariproseukur Chulsindaehag Kaseuteuje [The Caste System of Private Law School]*, HANKYOREH (June 2, 2016), http://www.hani.co.kr/arti/society/society_general/746541.html.

Kyung-Min Kim, *Guekan-ui Hap-gyeog-ryule Geukdanjeok Seotaegkkaji . . . Saramjabneun 'Byeonsi' [Extreme Choices Made Due to the Bar Exam]*, NEWSPIM (July 16, 2018, 2:32 PM), http://www.newspim.com/news/view/20180716000176.

Kyung-Pil Kim, *Seuoldae Oegyohakjeongong Joreopsaeng Jeonwon A Hakjeom . . . Hakjeom Peojuneun Seouldae [All SNU Foreign Relation Majors Graduates with an A]*, CHOSUN DAILY (June 9, 2017), http://news.chosun.com/site/data/html_dir/2017/06/09/2017060900258.html.

Sangyeon Lee, *2018 Nyeondo Je 7 Hoe Byeonhosasiheom 1599Myeong Hapgyeok (7Bo) [1599 people passed the 2018 Bar exam]*, THE L.J. (Apr. 20, 2018), http://www.lec.co.kr/news/articleView.html?idxno=47380.

SEOROYEON, http://cafe.daum.net/snuleet (last visited Oct. 16, 2018).

Sung Jin Lee, *Sabeopsiheom Junbisaeng "Roseukul Siljechaejeomgijun Gonggae" Seungso [The Bar Exam Taker Wins the Case Against Law School]*, THE LAW JOURNAL (Dec. 26 2016, 2:28 PM), http://www.lec.co.kr/news/articleView.html?idxno=43010.

Taeyun Gong, *LEET 1Man 502Myeong Jiwon . . . Seoul Eungsija 74% 50Seisang Goryeongja-do 99Myeong Dalhae [10,502 people apply for LEET]*, HANGUKGYEONGJE (June 16, 2018), http://news.hankyung.com/article/201806161158i.

Legislatures, Regulations and Other Legislative Materials

Beopakjeonmundaehagwon seolchi unyeonge gwanhan beomnyul [Act on the Establishment and Management of Professional Law Schools], Act No. 14152, May 29, 2016 (S. Kor.).

Byeonhosasiheombeop [National Bar Examination Act], Act No. 15154, Dec. 12, 2017 (S. Kor.).

DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] (S. Kor.).

Other Documents

Michael R. Hayse & Konrad H. Jarausch, *Recasting West German Elites: Higher Civil Servants, Business Leaders, and Physicians in Hessen, 1945-1955*, 1995 (unpublished Ph.D. dissertation, University of North Carolina).